KAREN P. HEWITT
United States Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Telephone: (619) 557-5610

CAROLINE A. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 305-2558
Facsimile: (202) 307-0054
Caroline.A.Newman@usdoj.gov
Western.TaxCivil@usdoj.gov

Attorneys for the United States of America

THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RODNEY M. TOOTHACRE, Plaintiff, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE Defendant.	)	Case No. 07-cv-2289-DMS-WMC **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNITED STATES' MOTION TO STAY PROCEEDINGS** **[ORAL ARGUMENT IS NOT REQUESTED.]**

The United States of America ("United States"), by and through its undersigned counsel, hereby submits this Memorandum of Points and Authorities in Support of its Motion to Stay Proceedings until the Plaintiff's case currently pending in the United States Tax Court, Case No. 26357-06, is resolved.[1] The Tax Court case is poised to resolve the issue of whether the liens filed against Plaintiff for his outstanding 1993 and 1994 income tax liabilities—the exact liens at issue in the present case—are "legally enforceable"

[1]The impact of Plaintiff's Tax Court proceedings was first raised to the Court on February 22, 2008, in the United States' letter to chambers pursuant to Rule 6(a) of the Civil Pretrial & Trial Procedures. (Newman Decl. ¶ 8; Ex. C.)

within the meaning of the Internal Revenue Code. Because Plaintiff must demonstrate that these liens are legally unenforceable in order to prevail on his claim for damages under § 7432, and because the Tax Court's decision will have the effect of res judicata, this Court should exercise its discretion and stay these proceedings pending the outcome of Plaintiff's Tax Court proceedings. In support of its Motion to Stay Proceedings, the United States respectfully shows the following:

BACKGROUND

A. The District Court Proceedings.

On December 6, 2007, Plaintiff filed his Complaint in the above-captioned matter against the United States seeking a temporary restraining order ("TRO") and damages, under 26 U.S.C. §§ 7432 and 7433. (Compl. ¶ 1.) By stipulation of the parties, Plaintiff's claim for a TRO was dismissed with prejudice on February 26, 2008. (Docket #9.) Subsequently, the United States filed a Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim on which relief can be granted pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, respectively. On June 5, 2008, this Court granted the United States' Motion to Dismiss with respect to the § 7433 claim, but it denied it with respect to the § 7432 claim. Accordingly, the single remaining claim in this action is Plaintiff's claim for damages pursuant to § 7432 for failure to release a tax lien. Plaintiff seeks $100,000 in damages. (Compl. ¶ 1.)

With respect to this claim, the Complaint alleges that the Internal Revenue Service ("IRS") was required by 26 U.S.C. § 6325 to release federal tax liens filed against Plaintiff for his outstanding income tax liabilities for the tax years 1993 and 1994 because the collection statute of limitations had expired. Alleging that the IRS knowingly or negligently failed to do so, Plaintiff contends that he is entitled to damages under § 7432. (Compl. ¶¶ 8–11, 13–14.) No scheduling order has been issued and the parties have not initiated any discovery. The United States' Answer is due by June 19, 2008.[2]

B. The Administrative and Tax Court Proceedings.

In December of 2005, Plaintiff requested a Due Process Hearing in order to challenge, among other things, the propriety of the tax liens filed against him for his outstanding 1993 and 1994 income tax liabilities. (Newman Decl. ¶ 2.) These are the exact liens that are at issue in the present case. At his Due Process hearing, Plaintiff argued that the statute of limitations for collection had expired for those liabilities. (Newman Decl. ¶ 3.) On November 22, 2006, the IRS issued its Notice of Determination to Plaintiff, finding that the limitations period was still open and sustaining the liens. (Newman Decl. ¶ 4.) Pursuant to 26 U.S.C. §§ 6320(c) and 6330(d), Plaintiff appealed this decision by filing a petition in the United States Tax Court on December 21, 2006. (Newman Decl. ¶ 5; Ex. A.) One of the questions presented in the Tax Court proceedings is whether the statute of limitations bars collection on Plaintiff's outstanding income tax liabilities for 1993 and 1994. (Newman Decl ¶ 6; Ex. B.) The case has been fully briefed and has been submitted for decision pursuant to Rule 122 of the Tax Court Rules of Practice and Procedure.[3]

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[2]Filed concurrently herewith is the United States' Motion for Extension of Time to Answer until ten days following the resolution of the Tax Court proceeding or this Court's denial of this Motion to Stay Proceedings.

ARGUMENT

This Court has broad discretion in determining whether to stay proceedings. See Fed. Savings & Loan v. Molinaro, 889 F.2d 899, 902–03 (9th Cir. 1989) (reviewing district court's stay of proceedings for abuse of discretion); cf. Degen v. United States, 517 U.S. 820, 827 (1996) (noting that a trial court's inherent authority to manage discovery in a civil suit includes the ability to manage the impact of a criminal proceeding to avoid interference with a related civil case). The decision whether to stay civil proceedings should be made in light of the particular circumstances and competing interests involved in the case. See Keating v. Off'c of Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1994).

In light of the parties' stipulation and this Court's order on June 5, 2008, the single remaining claim in this action is the one for damages under § 7432. This section states that a taxpayer may bring a suit for damages in district court "[i]f any officer or employee of the [IRS] knowingly, or by reason of negligence, fails to release a lien under section 6325 . . . ." 26 U.S.C. § 7432(a). In turn, § 6325 states that "the Secretary shall issue a certificate of release of any lien imposed with respect to any internal revenue tax

[3] This rule states that "[a]ny case not requiring a trial for the submission of evidence . . . may be submitted at any time after joinder of issue . . . by motion of the parties filed with the Court. The parties need not wait for the case to be calendered for trial and need not appear in Court." Tax Ct. R. Practice & P. 122.

. . . [if] the Secretary finds that the liability for the amount assessed, together with all interest with respect thereof, has been fully satisfied or has become legally unenforceable . . . ." 26 U.S.C. § 6325(a)(1). The Complaint does not allege that Plaintiff paid his outstanding liabilities; it alleges only that the liens are unenforceable because the statute of limitations for collection expired. (Compl. ¶¶ 8–11, 13–14.) Whether the liens filed against Plaintiff for his 1993 and 1994 income tax liabilities are legally enforceable is the precise issue awaiting decision in the Tax Court. (Newman Decl ¶ 7; Ex. B.)

A decision of the Tax Court for a tax year is res judicata as to all claims that were or could have been raised for that tax year. See United States v. Int'l Bldg. Co., 345 U.S. 502, 506 (1953) (holding that Tax Court decisions based on stipulation for the tax years 1933, 1938, and 1939 were res judicata of all tax claims for those years regardless of whether the basis of the stipulations for those years reached the merits of the case); Comm'r v. Sunnen, 333 U.S. 591, 598 (1948) ("[I]f a claim of liability or non-liability relating to a particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year."); Turner v. United States, 553 F. Supp. 347, 349–50 (W.D. Va. 1982) (holding that Tax Court's decision was res judicata in action by taxpayer in district court to be relieved of liability for Tax Court judgment on the grounds of incompetent representation in the Tax Court and to compel the United States to release its lien on taxpayer's home); United States v. Brown, 225 F. Supp. 414, 415 (E.D. Pa.), aff'd, 337 F.2d 858 (3rd Cir. 1964) (holding that prior stipulated judgment of Tax Court was conclusive of tax claim for that year covered by the judgment); United States v. Leary, 228 F. Supp. 467, 470 (D. Conn. 1963) (holding that Board of Tax Appeals' determination of deficiencies for 1933–1935 was res judicata in Government's action for collection of taxes for those years). Res judicata binds the parties and those in privity with them "'not only as to every matter which was offered and received to defeat the claim or demand but as to any other admissible matter which might have been offered for that purpose.'" Comm'r v. Sunnen, 333 U.S. 591, 597 (1948) (quoting Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)).

Because the Tax Court's decision would be res judicata, it would simplify the issues in this case. For example, if the Tax Court determines that the collection statute of limitations has not expired, holds that the liens are enforceable, and sustains the liens, Plaintiff will be foreclosed from arguing that the liens are "unenforceable" under § 6325. Because such a showing is antecedent to succeeding on a claim for damages under § 7432, the present case would be fully resolved in favor of the United States. On the other hand, if the Tax Court determines that the collection statute of limitations did expire, that the IRS improperly filed the liens, and that the liens are not enforceable, the issues in this case would narrow. In this circumstance, the parties avoid prevent duplicative discovery on the statute of limitations issue by limiting discovery to the issue of damages.

Moreover, staying these proceedings pending the outcome of the Tax Court case promotes judicial economy. As mentioned, the Tax Court's determination will narrow the issues, if not dispose of the case entirely, and prevent duplicative efforts by two different judicial systems. See Keating, 45 F.3d at 325 (analyzing whether judicial resources are conserved in determining whether to grant a stay). Further, the Tax Court case has been fully briefed and the parties are awaiting a decision. Any concern about undue delay is thereby minimized. See id. Further, no prejudice will be suffered by the parties in the present case as discovery efforts have not yet begun. See id. Finally, a stay would also eliminate any risk of inconsistent judgments regarding the enforceability of liens at issue.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court stay the proceedings until a decision of the Tax Court has been rendered and becomes final. The United States further requests any additional relief to which it may be entitled.

DATED this 18th day of June, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

By: /s Caroline A. Newman
CAROLINE A. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-2558

Attorneys for United States

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 2008, I electronically filed the foregoing **UNITED STATES' MOTION TO STAY PROCEEDINGS, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNITED STATES' MOTION TO STAY PROCEEDINGS, and DECLARATION OF CAROLINE A. NEWMAN** with the Clerk of Court using the CM/ECF system, and sent a true and correct copy of the foregoing vis U.S. First Class Mail to:

RODNEY M. TOOTHACRE
13742 Indian Peak Trail
Poway, CA 92064
T: (858)513-0217
F: (858)513-0117
(Pro se)

s/ Caroline A. Newman
CAROLINE A. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 683
Washington, D.C. 20044
Telephone: (202) 305-2558
Facsimile: (202) 307-0054
Email: Caroline.A.Newman@usdoj.gov